

Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN 17 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
In the Matter of Access Charge Reform;)
Reform of Access Charges Imposed by)
Competitive Local Exchange Carriers;)
Petition of Z-Tel Communications, Inc.,)
For Temporary Waiver of Commission)
Rule 61.26(d) to Facilitate Deployment)
of Competitive Service in Certain Metropolitan)
Statistical Areas)

CC Docket No. 96-262

CCB/CPD File No. 01-19

**PETITION OF COX COMMUNICATIONS, INC.
FOR CLARIFICATION OR RECONSIDERATION**

Cox Communications, Inc. ("Cox"), by its attorneys and pursuant to Section 1.429(d) of the Commission rules, hereby requests clarification or, in the alternative, reconsideration of a portion of the *Eighth Report and Order and Fifth Order on Reconsideration* (the "Order"), in the above-captioned proceeding.¹ Specifically, Cox requests that the Commission clarify the access charges applicable when a CLEC has at least two switches in its serving area and one of those switches ("Switch A") performs tandem switching functions for IXC traffic. In this instance, Switch A directs IXC traffic to a separate CLEC switch ("Switch B") for termination to the CLEC's end user customers who are served by Switch B. Cox believes that the CLEC may impose separate charges on the IXC for tandem and end-office switching under this arrangement. This result is fully consistent with the Commission's holding that CLECs should be permitted to charge IXCs "for those access services that the competitive LEC actually provides," but

¹ Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc., For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas, *Eighth Report and Order and Fifth Order on Reconsideration*,

clarification is necessary because certain passages in the *Order* suggest a contrary conclusion. Because certainty in this area is necessary to avoid confusion and billing disputes, Cox requests that the Commission promptly clarify this issue.²

In the *Order*, the Commission addressed several issues regarding CLEC access charges,³ including the appropriate switching charges for IXC traffic terminated through CLEC end-office switches.⁴ In particular, the Commission denied a request by NewSouth Communications, Inc. (“NewSouth”) that the Commission allow a CLEC to charge IXCs for all of the competing incumbent LEC access elements (including tandem switching and end office switching) if its switch serves a geographic area comparable to the competing incumbent LEC’s tandem switch.⁵ In denying this request, the Commission held that CLECs “should charge only for those services that they provide,”⁶ and that the proper rate is the ILEC rate for equivalent services.⁷ The Commission went on to say that the comparable “incumbent LEC switching rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers.”⁸

This Commission’s model clearly spells out the permissible CLEC access charges when a CLEC serves its customers through a single switch. When a single CLEC switch performs

CC Docket No. 96-262, CCB/CPD File No. 01-19, FCC 04-110 (rel. May 18, 2004).

² Cox does not believe it was the Commission’s intent to prevent CLECs from obtaining compensation for both tandem and end-office switching when these functions are provided by separate switches. However, to the extent that was the Commission’s intent, Cox requests that this filing be treated as a petition for reconsideration pursuant to Section 1.429 of the Commission’s rules. 47 C.F.R. § 1.429.

³ *Id.*, ¶¶ 10-18.

⁴ *Id.*, ¶¶ 19-21.

⁵ *Id.*, ¶¶ 20-21.

⁶ *See id.* at ¶ 21.

⁷ *Id.*

⁸ *See id.*

functions that would be carried out by multiple switches on an ILEC's network, the Commission has decided that only a single switching charge can be assessed and that charge should be assessed at the end-office rate. This model, however, does not provide guidance to CLECs that operate multiple switches in a single service area, any of which could perform tandem switching functions for traffic terminated at a different switch. Moreover, by discussing only the scenario in which CLECs pass traffic between two other carriers – a traditional transiting traffic arrangement – the Commission has introduced a potential new source of confusion in serving areas where CLECs operate multiple switches.

To dispel this confusion, the Commission should clearly hold that CLECs with multiple switches in a serving area can charge both tandem and end-office switching charges when their switches perform both functions discreetly. For example, if a CLEC operates two switches in a market, an IXC may decide to directly interconnect with only one of them. In that case, all incoming and outgoing IXC traffic will be routed through the switch where the IXC chooses to interconnect. Some traffic will be terminated to CLEC end user customers served by that switch. For such traffic, the appropriate switching rate is the end-office rate. The remainder of the IXC's traffic, however, will be transported from that switch to the second switch where the traffic ultimately will be terminated to CLEC end user customers. In that case, the IXC should pay tandem switching charges for access to the switch (Switch A) with which it interconnects, and end-office switching charges for access to the switch (Switch B) that terminates the call.⁹

⁹ As the Commission pointed out, CLECs are permitted to charge IXCs for common transport when they provide it. *Id.* CLECs' ability to assess such charges, however, is irrelevant to their ability to recover comparable access charges to those recovered by ILECs. In the two-switch scenario Cox outlines, the CLEC should be permitted to charge for tandem switching, common transport, and end-office switching.

This is the only result that squares with the Commission's policy of allowing CLECs to recover access charges for services that CLECs actually provide to IXCs. NewSouth's proposed switching rates were based a single CLEC switch performing the equivalent of both end-office and tandem switching functions on the same traffic.¹⁰ Cox understands that in such cases, the Commission permits recovery of only the end-office switching charges. Where, however, a CLEC switch performs tandem functions for IXC traffic that ultimately is terminated through a separate CLEC end-office switch, the CLEC should be permitted to charge for both access elements since it is providing both. Such charges are analogous to those assessed by ILECs, and if the Commission denies them to CLECS, IXCs will gain access to CLEC networks on terms considerably more favorable than those upon which they access ILEC networks. This would place CLECs at a significant competitive disadvantage.

This access charge arrangement also is perfectly equitable. Each IXC has the ability to interconnect with each CLEC at each of the CLEC's terminating end-office switches, if it so chooses. If the originating IXC elects to interconnect at a point on the CLEC's network from which the CLEC performs tandem switching functions to deliver the traffic to the terminating end-office switch, the IXC should be required to pay the lawful charge for the switching elements it uses. To determine otherwise would effectively give IXCs a free ride for CLEC tandem switching.

Finally, the Commission should resolve this issue now to avoid potential disputes arising out of the language of the *Order*. As the Commission knows, one of the main impediments to

¹⁰ Cox notes that NewSouth's proposed clarification did not directly raise the issues Cox is addressing in this petition. Consequently, interested parties did not have the opportunity to comment on these issues and Cox believes it is unlikely that the Commission would intend to decide these issues when they were not squarely before it or raised by any parties.

CLEC market penetration has been the constant uncertainty and litigation over intercarrier interconnection and intercarrier payment for services. As these disputes have wended their way through the Commission and the courts, considerable amounts of the resources that should be dedicated to increasing local competition have instead gone to litigating these issues. To avoid this unnecessary burden, the Commission should eliminate all doubt without undue delay.

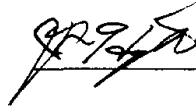
CONCLUSION

For these reasons, Cox respectfully requests that the Commission clarify that its holding in the *Order* is limited to cases in which a CLEC performs both tandem and end-office functions on the same traffic terminating from the same switch. The Commission should further clarify that where two CLEC switches separately perform tandem and end-office functions on the same traffic destined for the CLEC's end user customers, the appropriate switching rates to be applied for each switch depend upon the function being performed by that switch. Accordingly, both tandem and end-office switching charges should be applied in that situation. If the Commission intended its *Order* to apply equally to CLECs in single and multi-switch environments, regardless of the services that the CLEC switches actually provide, then Cox respectfully requests that the Commission reconsider that decision for the reasons stated herein. Similarly, the Commission should reconsider that decision if it intended for the CLEC tandem switching

rate to apply only when a CLEC switch is functioning as a transit arrangement, passing calls between two other carriers.

Respectfully submitted,

COX COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to be "JGHR", is written over a horizontal line.

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